

P-482/NA-88-584 P999/CI-88-917 GRANTING INTERIM AUTHORITY TO PROVIDE
ALTERNATIVE OPERATOR SERVICES SUBJECT TO APPROVAL OF TARIFF FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of an Application for a Certificate of Authority and Tariff Filing by American Operator Services, Inc., d/b/a National Telephone Services, for the Provision of Long Distance and Alternative Operator Services

ISSUE DATE: February 10, 1989

DOCKET NOS. P-482/NA-88-584
P-999/CI-88-917

ORDER GRANTING INTERIM
AUTHORITY TO PROVIDE
ALTERNATIVE OPERATOR SERVICES
SUBJECT TO APPROVAL OF TARIFF
FILING

PROCEDURAL HISTORY

On August 25, 1988 American Operator Services, Inc. (American or the Company) filed an application for a certificate of authority to provide alternative operator services and operator-assisted long distance services within the state of Minnesota. On October 26, 1988 the Commission initiated an investigation to determine whether alternative operator services were in the public interest, whether they should be classified as emergingly competitive under Minn. Stat. § 237.59, subd. 5 (1988), and whether they should be rate-regulated. Order Consolidating Dockets and Notice and Order for Hearing, October 26, 1988, Docket Nos. P-485/NA-88-291, P-478/M-88-359. The Commission subsequently consolidated the Company's petition and similar petitions from other companies with this investigation and ordered contested case proceedings. Order Accepting Withdrawal of Petition, Consolidating Dockets and Notice and Order for Hearing, December 16, 1988, Docket No. P-999/CI-88-917.

On November 22, 1988 the Company filed a request for interim operating authority. The Company stated that it was willing to revise its proposed tariffs and conduct its business to meet the consumer protection and public safety concerns expressed by the Commission in the Orders cited above.

The Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) recommended granting interim authority, subject to two conditions: (1) the elimination of geographical deaveraging from the Company's long distance rates, and (2) prior Commission approval of a tariff filing adequately addressing the consumer protection and public safety concerns mentioned above.

The matter came before the Commission on February 7, 1989.

FINDINGS AND CONCLUSIONS

The Commission agrees with the Department and the RUD-OAG that it is appropriate to grant American the interim authority it seeks. The Company is an experienced provider of alternative operator services. It is authorized to provide interstate service by the Federal Communications Commission and is authorized to provide intrastate service by the regulatory authorities of 12 states. The Company also provides intrastate service in 13 states where no state authorization is required.

The Company's management and financial condition are stable and demonstrate an ability to provide safe, reliable service and to respond promptly to customer complaints.

The Company has responded in a prompt and forthright manner to the public safety and consumer protection concerns raised in the Commission's earlier Orders. The Company appears to be willing and able to conduct its business to meet those concerns and to protect the interests which underlie them. Those concerns are as follows: customer access to the provider of operator services, adequate notice to customers regarding price and alternative service providers, quality of service, procedures for handling emergency calls, billing and collection procedures, procedures for handling customer complaints and refunds, and compliance with statutory requirements regarding maintaining an office in this state.

Finally, the Company has stated its willingness to limit its rates to those already approved by the Commission for operator services, and to end its practice of allowing host facilities to collect from end users a surcharge of up to \$1.00 per call. This eliminates concerns about the possibility of exploitative pricing.

Two concerns remain. One relates to ensuring that host facilities cooperate with the Company in complying with the terms of this Order. The other relates to geographical deaveraging and price discrimination reflected in the Company's rate schedule.

The first concern results from the fact that the end users of the Company's service will not contract with American directly but will be using a service for which their host facility (a hotel, motel, hospital, or pay phone) has contracted. The cooperation of these host facilities is therefore essential if the notice procedures required to ensure customer choice are to be carried out. The Commission will require the Company to incorporate terms to ensure compliance with the terms of this Order in its contracts with host facilities.

The second concern is that the rates filed by the Company do reflect some geographical deaveraging and price discrimination. This is because the Company's rate schedules track those of AT&T and Northwestern Bell. Calls of equal distance would be charged at different rates, then, if one crossed a LATA boundary and was charged at AT&T rates, while the other remained intra-LATA and was charged at Northwestern Bell rates. Similarly, a customer using interLATA operator services would

pay a different rate from one using intra-LATA operator services, solely because the call being placed crossed a LATA boundary.

The price differential for long distance rates contravenes established Commission policy on geographical deaveraging. The price differential for operator services is unreasonable price discrimination under Minn. Stat. § 237.09 (1988), since the Company has not demonstrated that LATA boundaries bear any reasonable relationship to the pricing of operator services.

The Commission has recently reaffirmed its opposition to geographical deaveraging in a proceeding entitled In the Matter of the Petition of the Office of the Attorney General for an Order Concerning Geographically Deaveraged Long-Distance Rates, Docket No. P-999/C-88-615. In that proceeding the Commission required all telephone companies which were parties to the proceeding and had not elected alternative regulation to file geographically averaged rates or to show good cause why their deaveraged rates should be found just and reasonable. Order Granting Petition and Requiring Filing, November 23, 1988, Docket No. P-999/C-88-615. American's situation is identical to the one treated there, and the Company will be required to file averaged rates or to make a good cause showing before its tariff filing will be approved.

The Commission concludes that the public interest would be adequately protected by conditioning a grant of interim authority to American on prior approval of a tariff filing doing the following: (1) adequately addressing the public safety and consumer protection concerns expressed in the October 26 and December 16 Orders, (2) including form contracts with host facilities designed to ensure their cooperation with the terms of this Order, and (3) eliminating geographical deaveraging and price discrimination from the Company's long distance and operator service rates.

This grant of interim authority is not based on any finding regarding the competitive or noncompetitive nature of operator services, but on a factual finding that this company, operating under the constraints imposed by this Order, under careful monitoring by the Department, can in all likelihood provide operator services without jeopardizing the public interest. Today's decision does not imply Commission acceptance of any position under examination in the contested case proceeding.

ORDER

1. American Operator Services, Inc., d/b/a National Telephone Services, is granted authority to provider operator services to pay telephone customers, and to customers using telephones in hotels, motels, and hospitals while contested case proceedings in this matter are being conducted, subject to the following conditions:
 - a. Prior Commission approval of a tariff filing adequately addressing the public safety and consumer protection concerns discussed above;
 - b. Prior Commission approval of form contracts with host facilities incorporating terms designed to ensure compliance with the terms of this Order;
 - c. Prior Commission approval of a tariff filing eliminating geographical deaveraging and price discrimination from the Company's long distance rates and operator service charges, or a Commission finding that the Company has demonstrated that its deaveraged rates are just and reasonable.
2. The Department of Public Service shall monitor the provision of operator services by American Operator Services, Inc. and shall promptly report to the Commission any violation of the terms of this Order.
3. This grant of interim authority may be revoked at any time upon a Commission finding that the Company has violated any of the terms of this Order.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)